

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PRINCE L. SPELLMAN,

Defendant.

8:21-CR-136

**ORDER ON MISCELLANEOUS
MOTIONS**

This matter is before the Court on defendant Prince L. Spellman’s Motion to Set Aside Judgment and Vacate Sentencing, [Filing 198](#), Motion for Leave of the Court to Extend Deadline in Appellate Filings, [Filing 200](#), and Motion Objecting to Sentence Imposed, [Filing 201](#). Spellman filed this Motions *pro se* and before the Eighth Circuit had appointed him counsel for his appeal. The Motions also came after Spellman filed his notice of appeal. [Filing 194](#). These Motions are denied.

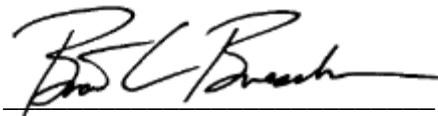
The Court does not have the authority to grant Spellman’s requested relief because Spellman is already appealing his conviction and sentencing. [Filing 194](#). When a notice of appeal is filed, the district court lacks authority to rule on matters that are at issue on appeal. *See FutureFuel Chem. Co. v. Lonza, Inc.*, 756 F.3d 641, 648 (8th Cir. 2014) (“Once a notice of appeal is filed, the district court is divested of jurisdiction over matters on appeal.” (quoting *State ex rel. Nixon v. Coeur D’Alene Tribe*, 164 F.3d 1102, 1106 (8th Cir. 1999))). A district court and an appellate court should not consider the same issues simultaneously. *See United States v. Queen*, 433 F.3d 1076, 1077 (8th Cir. 2006) (“[A] federal district court and a federal court of appeals should not assert jurisdiction over a case at the same time”). Setting aside a judgment and

vacating sentencing, extending briefing deadlines, and objections to the Court's sentence are matters presently before the Eighth Circuit Court of Appeals. Accordingly,

IT IS ORDERED that Spellman's Motion to Set Aside Judgment and Vacate Sentencing, [Filing 198](#), Motion for Leave of the Court to Extend Deadline in Appellate Filings, [Filing 200](#), and Motion Objecting to Sentence Imposed, [Filing 201](#), are denied.

Dated this 23rd day of February, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "B. C. Buescher", written over a horizontal line.

Brian C. Buescher
United States District Judge